

AMENDED IN SENATE APRIL 27, 2005

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 735

Introduced by Senator Torlakson

February 22, 2005

An act to amend Sections 1942.6 and 1962 of, and to add Section 1962.1 to, the Civil Code, and to amend Section 602 of the Penal Code, relating to ~~tenancy~~ *trespass*.

LEGISLATIVE COUNSEL'S DIGEST

SB 735, as amended, Torlakson. ~~Tenancy.~~ *Trespass*.

(1) Existing law provides that a person entering real property during certain hours or circumstances, when invited by the occupant to provide tenants' rights information or to participate in specified associations, is not civilly or criminally liable for trespass.

This bill would provide that a lessor or a lessor's agent that prevents or attempts to prevent an entry, as described above, is liable in a civil action for actual damages and punitive damages under specified circumstances. The bill would require a court to award reasonable attorney's fees to a prevailing party in this action if either party requests attorney's fees.

(2) Existing law requires any owner of a dwelling structure containing one or more units offered to the public for rent or residential lease to disclose to a tenant various information, including the address at which personal service may be effected for each manager and each owner of the premises, the telephone numbers of those persons, and the name and address of the person or entity to whom rent payments shall be made. Existing law requires that the information be kept current and that these requirements extend to any

~~successor owner or manager, who must comply within 15 days of succeeding a prior owner or manager.~~

~~This bill would require that, not later than 5 days after ownership of a residential dwelling, as described above, is transferred, the transferor owner notify a tenant of the change in ownership and the name of any new owner, as specified. The bill would require the new owner, within 15 days of the transfer, to submit a written statement to each tenant with specified information and to attach a copy of the recorded deed of transfer. The bill would require an owner engaging a new agent to execute a notarized certificate of agency, and to provide a copy of that certificate and other information to each tenant, as specified. The bill would provide that, until an owner complies with these requirements, a tenant who appropriately tenders rent, pursuant to payment information that the tenant has already received or according to prior practice, is not liable for nonpayment of rent, as specified.~~

~~(3) Existing~~

~~Existing law makes it a misdemeanor to willfully commit a trespass by engaging in specified acts, but excepts from these provisions certain lawful labor activities.~~

~~This bill would except from the trespass provisions, described above, persons entering property, when invited by the occupant, for purposes of providing tenants' rights information or participating in specified associations make clarifying changes to that provision.~~

~~Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1942.6 of the Civil Code is amended to
- 2 read:
- 3 1942.6. (a) Any person entering onto residential real
- 4 property, upon the invitation of an occupant, during reasonable
- 5 hours or because of emergency circumstances, for the purpose of
- 6 providing information regarding tenants' rights or to participate
- 7 in a lessees' association or association of tenants or an
- 8 association that advocates tenants' rights shall not be liable in
- 9 any criminal or civil action for trespass.
- 10 (b) A lessor or agent of a lessor who prevents or attempts to
- 11 prevent an entry onto residential real property described in

1 ~~subdivision (a) shall be liable in a civil action for all of the~~
2 ~~following:~~

3 ~~(1) Actual damages sustained.~~

4 ~~(2) Punitive damages in an amount of not less than one~~
5 ~~hundred dollars (\$100) nor more than one thousand dollars~~
6 ~~(\$1,000) if the lessor or agent has been guilty of fraud,~~
7 ~~oppression, or malice with respect to the violation.~~

8 ~~(c) In an action brought pursuant to this section, the court shall~~
9 ~~award reasonable attorney's fees to the prevailing party if either~~
10 ~~party requests attorney's fees.~~

11 ~~(d) The remedies provided by this section shall be in addition~~
12 ~~to any other remedies provided by law.~~

13 ~~(e) The Legislature finds and declares that subdivision (a) is~~
14 ~~declaratory of existing law. Nothing in subdivision (a) shall be~~
15 ~~construed to enlarge or diminish the rights of any person under~~
16 ~~existing law.~~

17 SEC. 2. ~~Section 1962 of the Civil Code is amended to read:~~

18 ~~1962. (a) Any owner of a dwelling structure specified in~~
19 ~~Section 1961 or a party signing a rental agreement or lease on~~
20 ~~behalf of the owner shall do all of the following:~~

21 ~~(1) Disclose therein the name, telephone number, and usual~~
22 ~~street address at which personal service may be effected of each~~
23 ~~person who is:~~

24 ~~(A) Authorized to manage the premises.~~

25 ~~(B) An owner of the premises or a person who is authorized to~~
26 ~~act for and on behalf of the owner for the purpose of service of~~
27 ~~process and for the purpose of receiving and receipting for all~~
28 ~~notices and demands.~~

29 ~~(2) Disclose therein the name, telephone number, and address~~
30 ~~of the person or entity to whom rent payments shall be made.~~

31 ~~(A) If rent payments may be made personally, the usual days~~
32 ~~and hours that the person will be available to receive the~~
33 ~~payments shall also be disclosed.~~

34 ~~(B) At the owner's option, the rental agreement or lease shall~~
35 ~~instead disclose the number of either:~~

36 ~~(i) The account in a financial institution into which rent~~
37 ~~payments may be made, and the name and street address of the~~
38 ~~institution; provided that the institution is located within five~~
39 ~~miles of the rental property.~~

~~(ii) The information necessary to establish an electronic funds transfer procedure for paying the rent.~~

~~(3) Disclose therein the form or forms in which rent payments are to be made.~~

~~(4) Provide a copy of the rental agreement or lease to the tenant within 15 days of its execution by the tenant. Once each calendar year thereafter, upon request by the tenant, the owner or owner's agent shall provide an additional copy to the tenant within 15 days. If the owner or owner's agent does not possess the rental agreement or lease or a copy of it, the owner or owner's agent shall instead furnish the tenant with a written statement stating that fact and containing the information required by paragraphs (1), (2), and (3) of subdivision (a).~~

~~(b) In the case of an oral rental agreement, the owner, or a person acting on behalf of the owner for the receipt of rent or otherwise, shall furnish the tenant, within 15 days of the agreement, with a written statement containing the information required by paragraphs (1), (2), and (3) of subdivision (a). Once each calendar year thereafter, upon request by the tenant, the owner or owner's agent shall provide an additional copy of the statement to the tenant within 15 days.~~

~~(c) The information required by this section shall be kept current and this section shall extend to and be enforceable against any successor owner or manager.~~

~~(d) A party who enters into a rental agreement on behalf of the owner who fails to comply with this section is deemed an agent of each person who is an owner.~~

~~(1) For the purpose of service of process and receiving and receipting for notices and demands.~~

~~(2) For the purpose of performing the obligations of the owner under law and under the rental agreement.~~

~~(3) For the purpose of receiving rental payments, which may be made in cash, by check, by money order, or in any form previously accepted by the owner or owner's agent, unless the form of payment has been specified in the oral or written agreement, or the tenant has been notified by the owner in writing that a particular form of payment is unacceptable.~~

~~(e) Nothing in this section limits or excludes the liability of any undisclosed owner.~~

1 ~~(f) If the address provided by the owner does not allow for~~
2 ~~personal delivery, then it shall be conclusively presumed that~~
3 ~~upon the mailing of any rent or notice to the owner by the tenant~~
4 ~~to the name and address provided, the notice or rent is deemed~~
5 ~~receivable by the owner on the date posted, if the tenant can~~
6 ~~show proof of mailing to the name and address provided by the~~
7 ~~owner.~~

8 ~~SEC. 3.— Section 1962.1 is added to the Civil Code, to read:~~

9 ~~1962.1. (a) Not later than five days after ownership of a~~
10 ~~dwelling described in Section 1961 is transferred, the transferor~~
11 ~~owner shall notify a tenant of the change in ownership and the~~
12 ~~name of any new owner. If a new owner is not a natural person,~~
13 ~~the transferor owner shall also notify the tenants of any natural~~
14 ~~person authorized to act for the new owner.~~

15 ~~(b) The new owner shall, within 15 days of the transfer~~
16 ~~described in subdivision (a), submit a written statement to each~~
17 ~~tenant with the information required by Section 1962. The new~~
18 ~~owner shall attach a copy of the recorded deed to the written~~
19 ~~statement.~~

20 ~~(c) An owner engaging a new agent, including a manager,~~
21 ~~authorized to act for the owner with respect to a dwelling~~
22 ~~described in Section 1961, shall execute a notarized certificate of~~
23 ~~agency, with its effective date. Within 15 days of engaging the~~
24 ~~new agent, and prior to the new agent beginning his or her duties,~~
25 ~~the owner shall submit a written statement to each tenant with the~~
26 ~~information required by Section 1962 and the owner shall attach~~
27 ~~a copy of the notarized certificate to the written statement. If the~~
28 ~~agent is not a natural person, the owner shall also disclose the~~
29 ~~name of any natural person authorized to act for the owner. The~~
30 ~~new agent shall produce the original notarized certificate upon~~
31 ~~the request of a tenant.~~

32 ~~(d) Until the transferring owner complies with subdivision (a),~~
33 ~~or the new owner complies with subdivision (b), a tenant who~~
34 ~~tenders the rent in a timely manner according to the terms of the~~
35 ~~previous notice under Section 1962, or if the notice was not~~
36 ~~received, according to prior rental payment practice, shall not be~~
37 ~~liable for nonpayment of rent. In any unlawful detainer action~~
38 ~~brought for nonpayment of rent, the owner shall bear the burden~~
39 ~~of proof that the owner complied with subdivision (a) or (b).~~

~~(e) Until the owner who has engaged a new agent has complied with subdivision (e), a tenant who tenders the rent in a timely manner according to the terms of the previous notice under Section 1962, or if the notice was not received, according to prior rental payment practice, shall not be liable for nonpayment of rent. In any unlawful detainer action brought for nonpayment of rent, the owner shall bear the burden of proof that the owner complied with subdivision (e).~~

~~SEC. 4.~~

SECTION 1. Section 602 of the Penal Code is amended to read:

602. Except as provided in paragraph (2) of subdivision (v), subdivision (x), and Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to

1 the public, or upon any property of any person, without license
2 from the owner, any notice, advertisement, or designation of, or
3 any name for any commodity, whether for sale or otherwise, or
4 any picture, sign, or device intended to call attention to it.

5 (g) Entering upon any lands owned by any other person
6 whereon oysters or other shellfish are planted or growing; or
7 injuring, gathering, or carrying away any oysters or other
8 shellfish planted, growing, or on any of those lands, whether
9 covered by water or not, without the license of the owner or legal
10 occupant; or damaging, destroying, or removing, or causing to be
11 removed, damaged, or destroyed, any stakes, marks, fences, or
12 signs intended to designate the boundaries and limits of any of
13 those lands.

14 (h) (1) Entering upon lands or buildings owned by any other
15 person without the license of the owner or legal occupant, where
16 signs forbidding trespass are displayed, and whereon cattle,
17 goats, pigs, sheep, fowl, or any other animal is being raised, bred,
18 fed, or held for the purpose of food for human consumption; or
19 injuring, gathering, or carrying away any animal being housed on
20 any of those lands, without the license of the owner or legal
21 occupant; or damaging, destroying, or removing, or causing to be
22 removed, damaged, or destroyed, any stakes, marks, fences, or
23 signs intended to designate the boundaries and limits of any of
24 those lands.

25 (2) In order for there to be a violation of this subdivision, the
26 trespass signs under paragraph (1) must be displayed at intervals
27 not less than three per mile along all exterior boundaries and at
28 all roads and trails entering the land.

29 (3) This subdivision shall not be construed to preclude
30 prosecution or punishment under any other provision of law,
31 including, but not limited to, grand theft or any provision that
32 provides for a greater penalty or longer term of imprisonment.

33 (i) Willfully opening, tearing down, or otherwise destroying
34 any fence on the enclosed land of another, or opening any gate,
35 bar, or fence of another and willfully leaving it open without the
36 written permission of the owner, or maliciously tearing down,
37 mutilating, or destroying any sign, signboard, or other notice
38 forbidding shooting on private property.

39 (j) Building fires upon any lands owned by another where
40 signs forbidding trespass are displayed at intervals not greater

1 than one mile along the exterior boundaries and at all roads and
2 trails entering the lands, without first having obtained written
3 permission from the owner of the lands or the owner's agent, or
4 the person in lawful possession.

5 (k) Entering any lands, whether unenclosed or enclosed by
6 fence, for the purpose of injuring any property or property rights
7 or with the intention of interfering with, obstructing, or injuring
8 any lawful business or occupation carried on by the owner of the
9 land, the owner's agent or by the person in lawful possession.

10 (l) Entering any lands under cultivation or enclosed by fence,
11 belonging to, or occupied by, another, or entering upon
12 uncultivated or unenclosed lands where signs forbidding trespass
13 are displayed at intervals not less than three to the mile along all
14 exterior boundaries and at all roads and trails entering the lands
15 without the written permission of the owner of the land, the
16 owner's agent or of the person in lawful possession, and

17 (1) Refusing or failing to leave the lands immediately upon
18 being requested by the owner of the land, the owner's agent or by
19 the person in lawful possession to leave the lands, or

20 (2) Tearing down, mutilating, or destroying any sign,
21 signboard, or notice forbidding trespass or hunting on the lands,
22 or

23 (3) Removing, injuring, unlocking, or tampering with any lock
24 on any gate on or leading into the lands, or

25 (4) Discharging any firearm.

26 (m) Entering and occupying real property or structures of any
27 kind without the consent of the owner, the owner's agent, or the
28 person in lawful possession.

29 (n) Driving any vehicle, as defined in Section 670 of the
30 Vehicle Code, upon real property belonging to, or lawfully
31 occupied by, another and known not to be open to the general
32 public, without the consent of the owner, the owner's agent, or
33 the person in lawful possession. This subdivision shall not apply
34 to any person described in Section 22350 of the Business and
35 Professions Code who is making a lawful service of process,
36 provided that upon exiting the vehicle, the person proceeds
37 immediately to attempt the service of process, and leaves
38 immediately upon completing the service of process or upon the
39 request of the owner, the owner's agent, or the person in lawful
40 possession.

(o) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act, ~~or to persons entering property pursuant to Section 1942.6 of the Civil Code.~~ For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; ~~however, this.~~ *This* subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(p) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the

1 closure, at intervals not greater than one mile along the exterior
2 boundaries or along roads and trails passing through the lands.

3 (q) Refusing or failing to leave a public building of a public
4 agency during those hours of the day or night when the building
5 is regularly closed to the public upon being requested to do so by
6 a regularly employed guard, watchman, or custodian of the
7 public agency owning or maintaining the building or property, if
8 the surrounding circumstances would indicate to a reasonable
9 person that the person has no apparent lawful business to pursue.

10 (r) Knowingly skiing in an area or on a ski trail which is
11 closed to the public and which has signs posted indicating the
12 closure.

13 (s) Refusing or failing to leave a hotel or motel, where he or
14 she has obtained accommodations and has refused to pay for
15 those accommodations, upon request of the proprietor or
16 manager, and the occupancy is exempt, pursuant to subdivision
17 (b) of Section 1940 of the Civil Code, from Chapter 2
18 (commencing with Section 1940) of Title 5 of Part 4 of Division
19 3 of the Civil Code. For purposes of this subdivision, occupancy
20 at a hotel or motel for a continuous period of 30 days or less
21 shall, in the absence of a written agreement to the contrary, or
22 other written evidence of a periodic tenancy of indefinite
23 duration, be exempt from Chapter 2 (commencing with Section
24 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

25 (t) Entering upon private property, including contiguous land,
26 real property, or structures thereon belonging to the same owner,
27 whether or not generally open to the public, after having been
28 informed by a peace officer at the request of the owner, the
29 owner's agent, or the person in lawful possession, and upon
30 being informed by the peace officer that he or she is acting at the
31 request of the owner, the owner's agent, or the person in lawful
32 possession, that the property is not open to the particular person;
33 or refusing or failing to leave the property upon being asked to
34 leave the property in the manner provided in this subdivision.

35 This subdivision shall apply only to a person who has been
36 convicted of a violent felony, as specified in subdivision (c) of
37 Section 667.5, committed upon the particular private property. A
38 single notification or request to the person as set forth above shall
39 be valid and enforceable under this subdivision unless and until

1 rescinded by the owner, the owner's agent, or the person in
2 lawful possession of the property.

3 (u) (1) Knowingly entering, by an unauthorized person, upon
4 any airport operations area if the area has been posted with
5 notices restricting access to authorized personnel only and the
6 postings occur not greater than every 150 feet along the exterior
7 boundary.

8 (2) Any person convicted of a violation of paragraph (1) shall
9 be punished as follows:

10 (A) By a fine not exceeding one hundred dollars (\$100).

11 (B) By imprisonment in the county jail not exceeding six
12 months, or by a fine not exceeding one thousand dollars (\$1,000),
13 or both, if the person refuses to leave the airport operations area
14 after being requested to leave by a peace officer or authorized
15 personnel.

16 (C) By imprisonment in the county jail not exceeding six
17 months, or by a fine not exceeding one thousand dollars (\$1,000),
18 or both, for a second or subsequent offense.

19 (3) As used in this subdivision the following definitions shall
20 control:

21 (A) "Airport operations area" means that part of the airport
22 used by aircraft for landing, taking off, surface maneuvering,
23 loading and unloading, refueling, parking, or maintenance, where
24 aircraft support vehicles and facilities exist, and which is not for
25 public use or public vehicular traffic.

26 (B) "Authorized personnel" means any person who has a valid
27 airport identification card issued by the airport operator or has a
28 valid airline identification card recognized by the airport
29 operator, or any person not in possession of an airport or airline
30 identification card who is being escorted for legitimate purposes
31 by a person with an airport or airline identification card.

32 (C) "Airport" means any facility whose function is to support
33 commercial aviation.

34 (v) (1) Except as permitted by federal law, intentionally
35 avoiding submission to the screening and inspection of one's
36 person and accessible property in accordance with the procedures
37 being applied to control access when entering or reentering a
38 sterile area of an airport, as defined in Section 171.5.

39 (2) A violation of this subdivision that is responsible for the
40 evacuation of an airport terminal and is responsible in any part

1 for delays or cancellations of scheduled flights is punishable by
2 imprisonment of not more than one year in a county jail if the
3 sterile area is posted with a statement providing reasonable notice
4 that prosecution may result from a trespass described in this
5 subdivision.

6 (w) Refusing or failing to leave a battered women's shelter at
7 any time after being requested to leave by a managing authority
8 of the shelter.

9 (1) A person who is convicted of violating this subdivision
10 shall be punished by imprisonment in a county jail for not more
11 than one year.

12 (2) The court may order a defendant who is convicted of
13 violating this subdivision to make restitution to a battered woman
14 in an amount equal to the relocation expenses of the battered
15 woman and her children if those expenses are incurred as a result
16 of trespass by the defendant at a battered women's shelter.

17 (x) (1) Knowingly entering or remaining in a neonatal unit,
18 maternity ward, or birthing center located in a hospital or clinic
19 without lawful business to pursue therein, if the area has been
20 posted so as to give reasonable notice restricting access to those
21 with lawful business to pursue therein and the surrounding
22 circumstances would indicate to a reasonable person that he or
23 she has no lawful business to pursue therein. Reasonable notice is
24 that which would give actual notice to a reasonable person, and is
25 posted, at a minimum, at each entrance into the area.

26 (2) Any person convicted of a violation of paragraph (1) shall
27 be punished as follows:

28 (A) As an infraction, by a fine not exceeding one hundred
29 dollars (\$100).

30 (B) By imprisonment in a county jail not exceeding one year,
31 or by a fine not exceeding one thousand dollars (\$1,000), or both,
32 if the person refuses to leave the posted area after being
33 requested to leave by a peace officer or other authorized person.

34 (C) By imprisonment in a county jail not exceeding one year,
35 or by a fine not exceeding two thousand dollars (\$2,000), or both,
36 for a second or subsequent offense.

37 (D) If probation is granted or the execution or imposition of
38 sentencing is suspended for any person convicted under this
39 subdivision, it shall be a condition of probation that the person
40 participate in counseling, as designated by the court, unless the

1 court finds good cause not to impose this requirement. The court
2 shall require the person to pay for this counseling, if ordered,
3 unless good cause not to pay is shown.

O